there was no more than sufficient for its present consumers. Under these circumstances the court issued a *mandamus* compelling the company to make the connection. *State ex rel. Wood* v. *Consumers' Gas Trust Co.*, 61 N. E. Rep. 674. It is argued that the appellee in consideration of the extraordinary powers granted to it by the state, has undertaken to bring to the community a public benefit; that this benefit is for all alike who may wish to avail themselves of it; that "there can be no such thing as priority or superiority of right among those who possess the right in common;" and that a refusal by the appellee would be unjust discrimination against the relatrix.

It would seem that the court by a recognition of the settled rule in an apparently analogous class of cases might logically have reached a different conclusion. If a railroad, owing to an unusual influx of business, is unable to furnish sufficient cars for handling the freight, it may refuse to receive it without incurring liability. LAWSON, RTS., REM. & PRAC., § 1804. In such cases the carrier is not compelled to give the latest shipper a share of the accommodations and thereby proportionately diminish those of earlier shippers, but is allowed to carry in the order of presentation. Here the courts seem to recognize a priority of right which the principal case denies. The railroad is justified in refusing for the time being because its facilities have without its default become inadequate. In the principal case the failure of supply was likewise unforeseeable. In the one the impossibility is temporary, in the other permanent: a difference in degree, but apparently not a difference in kind. If the excuse is good in the former, it would seem to be good in the latter also.

REDUCTION OF DAMAGES ON ACCOUNT OF BENEFITS. — A rather novel point in the measure of damages has been recently presented. The Acanthus injured another ship in a collision. The liability was admitted, and the injured ship was dry docked for repairs. While in dry dock, the owners improved the opportunity to have her bottom cleaned and painted, and her bilge keels fitted, steps which they had contemplated before the collision but had not decided upon. This in no way interfered with the repairing, and did not detain the ship in dry dock any longer than it would otherwise have remained. Upon receipt of the bill for repairs and dry docking the owners of the Acanthus claimed a reduction of the dock charges on account of the facts above stated. The owners of the injured ship sued, and it was held that no reduction should be made. *The Acanthus*, 112 L. T. 153.

Notwithstanding the seeming fairness of the defendant's claim, there seems to be no ground of *quasi*-contract, on which to allow a reduction in the nature of a counter claim for the benefit of dry docking. There has been no unjust enrichment of the plaintiff at the expense of the defendant, since the defendant has not been compelled to pay any more than he would if the plaintiff had received no benefit. *Ruabon S. S. Co.* v. *London Assurance*, [1900] A. C. 6; KEENER, QUASI-CONT., 361.

There is more force in the argument that the advantage taken of the situation by the plaintiff should go in mitigation of damages. *Cf. Marine Ins. Co.* v. *China, etc., S. S. Co.*, 11 App. Cas. 573. Where a benefit accrues to the plaintiff as a proximate result of a tort, the damages are mitigated. *Luther* v. *Winnisimmet Co.*, 9 Cush. (Mass.) 171. If the own-

ers of the injured ship had definitely decided to dry dock her for their purposes, or if it were necessary so to do, then by the dry docking at the defendant's expense they have really been saved an expenditure which they otherwise would have incurred. The question then is whether such dry docking is the proximate result of the collision. If it is, then there should be a reduction, the damages being the expense of restoring the ship to its former condition. See 2 SEDG., DAM., 8th ed., § 592. No allowance is made for new materials put in place of old materials in the course of such repairs, nor for an increase in the value of the ship by reason of the repairs. *The Baltimore*, 8 Wall. (U. S.) 377, 385; *The Pactolus*, Swab. 173. Nor is there any reduction by reason of the fact that some of the repairs made would shortly have been necessary to enable the ship to pass her classification survey. *The Bernina*, 55 L. T. R. 781. In view of the reluctance of the courts to allow a reduction for benefits, as illustrated by the results reached in the decisions cited above, it may be doubted whether the dry docking would be considered a proximate result of the collision and the reduction allowed. But whichever view may be preferable, the result in the principal case is sound. It does not appear that the dry docking was necessary or had been definitely determined upon by the owners of the injured ship, and as it cannot be said that they were saved an expense which they would otherwise have incurred, no definite benefit can be pointed out.

INSURABLE INTEREST. — Courts and text-writers have for many years said that the insured must possess an "insurable interest" in the subject-matter of an insurance policy but this term has rarely been precisely defined. See *Lucena* v. *Craufurd*, 2 Bos. & Pul. N. R. 269. It has frequently been held that the interest need be neither an equitable nor a legal right or liability. *Cf. Sun Ins. Office* v. *Merz*, 64 N. J. Law 301; *Boston Ins. Co.* v. *Globe Fire Ins. Co.*, 174 Mass. 229. A recent text-book states that "such an interest that pecuniary loss will result to the assured from the destruction of the property" is sufficient. MAY, INS., 4th ed., § 72, note. The vagueness of the term may proceed from confused ideas as to the purpose of the requirement. Although exact statements of this purpose are hardly to be found in the books, it seems to have been usually conceived either as the prevention of wagering policies or as the limitation of the amount recoverable to the damages suffered. It is believed, however, that neither the character of the insurance policy as a wager, nor the measure of damages depends upon the relation between the insured and the subject-matter of the policy.

At present, either by decision or by statute, wagers are illegal in probably all common law jurisdictions. Hence those insurance policies which are mere wagers are void. See *Loomis* v. *Eagle, etc., Co.*, 6 Gray (Mass.) 396; *Trenton, etc., Co.* v. *Johnson*, 24 N. J. Law 576. Although in wagering contracts, as in insurance contracts, performance by one party is conditioned on contingencies more or less beyond the control of either party, yet the wagerer hopes to gain from his contract, the insured only to make himself whole. The difference lies solely in the intentions of the parties. Furthermore, partly, perhaps, as an approximation of the real intentions of the parties, partly as a judicial invention, the rule has become firmly established that the insurance contract is one of indem-